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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-361*

13 **MELINDA L. MA**
3330 Seaman
El Monte, CA 91773

ACCUSATION

14 Registered Nurse License No. 654821

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs (Board).

22 2. On or about March 21, 2005, the Board issued Registered Nurse License No. 654821
23 to Melinda L. Ma (Respondent). The Registered Nurse License was in full force and effect at all
24 times relevant to the charges brought herein and will expire on October 31, 2014, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.
28

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 2750 provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . ."

8. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

1 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
2 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
3 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
4 himself or herself, any other person, or the public or to the extent that such use impairs his or her
5 ability to conduct with safety to the public the practice authorized by his or her license.

6 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
7 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
8 or the possession of, or falsification of a record pertaining to, the substances described in
9 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
10 thereof. . . ."

11 9. Section 2764 provides that the expiration of a license shall not deprive the Board of
12 jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision
13 imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an
14 expired license at any time within eight (8) years after the expiration.

15 REGULATORY PROVISION

16 10. California Code of Regulations, title 16, section 1444, states:

17 "A conviction or act shall be considered to be substantially related to the qualifications,
18 functions or duties of a registered nurse if to a substantial degree it evidences the present or
19 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
20 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

21 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
22 subdivision (d) of Penal Code Section 11160. . . ."

23 COST RECOVERY

24 11. Section 125.3 provides that the Board may request the administrative law judge to
25 direct a licensee found to have committed a violation or violations of the licensing act to pay a
26 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 12. Respondent is subject to disciplinary action under sections 490 and 2761,
4 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that
5 Respondent was convicted of a crime substantially related to the qualifications, functions or
6 duties of a registered nurse which to a substantial degree evidences her present or potential
7 unfitness to practice in a manner consistent with the public health, safety, or welfare as follows:

8 **DRIVING UNDER THE INFLUENCE OF ALCOHOL (2012)**

9 a. On or about March 9, 2012, after pleading nolo contendere, Respondent was
10 convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with an
11 equal to or greater than 0.08% blood alcohol content (BAC)] in the criminal proceeding entitled
12 *The People of the State of California v. Melinda Ma* (Super. Ct. Los Angeles County, 2011, No.
13 11G07474). The Court sentenced Respondent to one (1) day jail, placed her on 36 months
14 probation, and ordered her to complete a 3-Month First-Offender Driving-Under-the-Influence
15 Program (AB-541 Program).

16 b. The circumstances underlying the conviction are as follows:

17 (1) On or about December 11, 2011, City of Hawthorne Police Department officers
18 responding to a burglary alarm at a residential complex encountered Respondent alone in
19 her vehicle – which was positioned in a driveway outside of the complex gate. The
20 reporting officer observed that her engine was running, the car was in gear, and that
21 Respondent was using a cell phone. He approached Respondent – and asked her to turn off
22 the engine. Respondent refused – then asked to see his (the officer's) identification. He
23 responded by asking for her identification – and again directing her to turn off the engine.
24 She again refused.

25 (2) The officer then opened the vehicle door and asked Respondent to step out. In doing
26 so, he smelled "a very strong odor" of alcohol emitting from her person.

27 (3) The officer then conducted field sobriety testing. He also determined that Respondent
28 was driving with a suspended license.

1 (4) Respondent declined to submit to an alcohol breathalyzer test, and was transported to
2 Torrance Hospital to have blood drawn.

3 (5) **Threat to Kill or Injure Officer Under Her Care** - On learning that Respondent
4 was in nursing (on arrival at Torrance Hospital) the reporting officer asked Respondent
5 where she worked. Respondent replied that she worked as a registered nurse at a major
6 local trauma hospital, on the surgical floor. She then told the officer: "if you are ever a
7 patient on my floor you are not gonna make it out of there alive." She added "you will be
8 unconscious or asleep and I could do it without you ever knowing."

9 (6) Respondent was then transported to the police station for booking.

10 (7) **Physically Assaultive Behavior** - Respondent was combative and physically
11 assaultive during and following the arrest underlying the conviction. Specifically, she
12 actively resisted being searched after booking – and used her fingernails to dig into and
13 deliberately lacerate the hands of officers attempting to search her.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Alcohol Related Conviction)**

16 13. Respondent is subject to disciplinary action under sections 2761, subdivision (a),
17 and 2762, subdivision (c), on the grounds of unprofessional conduct, in that on or about
18 March 9, 2012, Respondent sustained a criminal conviction involving alcoholic beverages.
19 Complainant refers to and by this reference incorporates the allegations of paragraph 12, above
20 as though fully set forth.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Dangerous Use of Alcohol)**

23 14. Respondent is subject to disciplinary action under sections 2761, subdivision (a),
24 and 2762, subdivision (c), on the grounds of unprofessional conduct, in that on or about
25 December 11, 2011, Respondent dangerously used alcoholic beverages to an extent or in a
26 manner dangerous or injurious to herself or others. Complainant refers to and by this reference
27 incorporates the allegations of paragraphs 12 and 13, above as though fully set forth.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Substantially Related Abusive Conduct - Unprofessional Conduct)**

3 15. Respondent is subject to disciplinary action under section 2761, subdivision (a), and
4 California Code of Regulations, title 16, section 1444, subdivision (a), on the grounds of
5 unprofessional conduct, in that on or about December 11, 2011, Respondent committed
6 substantially related assaultive or abusive acts during her contact with law enforcement officers.
7 Complainant refers to and by this reference incorporates the allegations of paragraph 12, above,
8 as though fully set forth.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct / Violate Nursing Practice Act)**

11 16. Respondent is subject to disciplinary action under section 2761, subdivision (a) and /
12 or (d), in that Respondent committed acts of unprofessional conduct and / or act violating the
13 Nursing Practice Act. Complainant refers to and by this reference incorporates the allegations of
14 paragraphs 12 -15, above, as though fully set forth.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board issue a decision:

- 18 1. Revoking or suspending Registered Nurse License No. 654821, issued to Melinda L.
19 Ma;
20 2. Ordering Melinda L. Ma to pay the Board the reasonable costs of the investigation
21 and enforcement of this case, pursuant to section 125.3; and
22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: November 2, 2012

24 *for* LOUISE R. BAILEY, M.ED., RN
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**Melinda L. Ma
3330 Seaman
El Monte, CA 91773**

Registered Nurse License No. 654821

Respondent.

Case No. 2013-361

REQUEST FOR DISCOVERY

[Gov. Code § 11507.6]

TO RESPONDENT:

Under section 11507.6 of the Government Code of the State of California, parties to an administrative hearing, including the Complainant, are entitled to certain information concerning the opposing party's case. A copy of the provisions of section 11507.6 of the Government Code concerning such rights is included among the papers served.

PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU ARE
HEREBY REQUESTED TO:

1. Provide the names and addresses of witnesses to the extent known to the Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
2. Provide an opportunity for the Complainant to inspect and make a copy of any of the following in the possession or custody or under control of the Respondent:
 - a. A statement of a person, other than the Respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the Respondent as to this person is the basis for the administrative proceeding;
 - b. A statement pertaining to the subject matter of the proceeding made by any party to another party or persons;

1 c. Statements of witnesses then proposed to be called by the Respondent and
2 of other persons having personal knowledge of the acts, omissions or events which are the
3 basis for the proceeding, not included in (a) or (b) above;

4 d. All writings, including but not limited to reports of mental, physical and
5 blood examinations and things which the Respondent now proposes to offer in evidence;

6 e. Any other writing or thing which is relevant and which would be
7 admissible in evidence, including but not limited to, any patient or hospital records
8 pertaining to the persons named in the pleading;

9 f. Investigative reports made by or on behalf of the Respondent pertaining
10 to the subject matter of the proceeding, to the extent that these reports (1) contain the names
11 and addresses of witnesses or of persons having personal knowledge of the acts, omissions
12 or events which are the basis for the proceeding, or (2) reflect matters perceived by the
13 investigator in the course of his or her investigation, or (3) contain or include by attachment
14 any statement or writing described in (a) to (e), inclusive, or summary thereof.

15 For the purpose of this Request for Discovery, "statements" include written statements by
16 the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical
17 or other recordings, or transcripts thereof, of oral statements by the person, and written reports or
18 summaries of these oral statements.

19 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery
20 should be deemed to authorize the inspection or copying of any writing or thing which is
21 privileged from disclosure by law or otherwise made confidential or protected as attorney's work
22 product.

23 Your response to this Request for Discovery should be directed to the undersigned attorney
24 for the Complainant at the address below within 30 days after service of the Accusation.

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1 Failure without substantial justification to comply with this Request for Discovery may
2 subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the
3 Government Code.

4 Dated: 11/2/2012
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